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PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/801,540
	Filing Date	March 8, 2001
	First Named Inventor	Bott
	Art Unit	1632
	Examiner Name	Woitach, Joseph T
Total Number of Pages in This Submission	Attorney Docket Number	30571-A-PCT-USA-A (070165.0582)

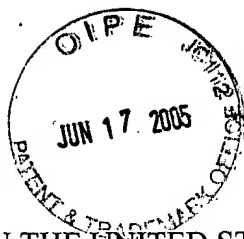
ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Return receipt post card; Check for \$ 1,370.00;
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Baker Botts LLP	Customer No.	21003
Signature	<i>Lisa B. Kole</i>		
Printed name	Lisa B. Kole		
Date	6/14/05	Reg. No.	35,225

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:	
Signature	<i>Lisa B. Kole</i>
Typed or printed name	Lisa B. Kole
Date	6/14/05

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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A30571-A-PCT-USA-A (070165.0582)  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bot *et al* Examiner : Woitach, Joseph T  
Serial No. : 09/801,540 Group Art Unit: 1632  
Filed : March 8, 2001  
For : IMMUNIZATION OF INFANTS

**PETITION TO CORRECT PRIORITY DATE PURSUANT TO 37 C.F.R. §  
1.78(a)(3)**

I hereby certify that this paper is being deposited with the United States Postal Service via First Class Mail on June 14, 2005 and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

Lisa B. Kole  
Attorney Name

Signature

35,225

Registration No.

June 14, 2005

Date of Signature

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Commissioner for Patents  
Post Office Box 1450  
Alexandria VA 22313-1450

Sir:

A Petition to correct priority date pursuant to 37 C.F.R. §

1.78(a)(3), filed by the Applicants December 6, 2004 was dismissed by the Office of Petitions in a Official Action mailed May 24, 2005. Dismissal of the petition was for alleged non-compliance under 37 C.F.R. § 1.78(a)(3) which requires reference under 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2) of prior filed

application(s). An amendment concurrently filed with the petition to correct priority date, to add the prior-filed application U.S. Patent Application No. 08/755,034, in the specification of the instant application was deemed not acceptable. The amendment was found to be not acceptable because it incorporates the prior-filed application by reference and is thereby considered to cause the introduction of new matter into the instant application. The Applicants were advised to provide a substitute amendment which deletes "the incorporation by reference" statement along with a renewed petition under 37 C.F.R. 1.78(a)(3).

Applicants herein repeat their petition to correct the priority date of this application due to an unintentionally delayed claim for priority under 35 U.S.C. §120. Applicants respectfully request that priority be granted to International Patent Application No. PCT/US97/21687, filed November 27, 1997, and to United States Patent Application No. 08/755,034, filed November 22, 1996, now United States Patent No. 6,204,250.

As detailed in their prior Petition, the instant application was filed March 8, 2001 as a continuation-in-part of U.S. Patent Application Serial No. 09/308,511 of Bot *et al.*, filed May 19, 1999 ("the '511 application"). In the transmittal of the instant application, it was indicated that the specification should be amended to claim priority to the '511 application. On the filing date, an unexecuted Combined Declaration and Power of Attorney was also submitted, containing a claim of priority not only to the '511 application, but also to United States Patent Application No. 08/755,034, filed November 22, 1996 ("the '034

application”), then pending (which was to issue shortly thereafter on March 20, 2001). Reference to the intervening PCT application, PCT/US97/21687, was absent from both documents.

On October 22, 2001, an executed Declaration and Power of Attorney was submitted, again claiming priority to both the ‘511 and ‘034 application. Although a filing receipt was issued March 13, 2002 stating only priority to the ‘511 application, it is believed that Applicants believed (erroneously) that priority had been accorded. This error was reinforced by the Examiner’s statement in the Official Action dated October 8, 2003, that:

This application filed March 8, 2001 is a continuation-in-part of application 09/308,511 filed May 19, 1999, which is a 371 national stage filing of PCT/US97/21687, filed November 21, 1997, which claims priority to application 08/755,034 filed November 22, 1996, now patent 6,204,250.

In the October 8, 2003 Official Action, the Examiner did not question the priority issue, but merely said that “the priority information must be present in the first line of the specification, however this information in the specification as amended is preceded by other information.”

It was only upon receipt of the Official Action dated October 4, 2004 that Attorneys for Applicants realized that a proper claim for priority had not been made. In addition, it was realized, for the first time, that priority to International Patent Application PCT/US97/21687, filed November 27, 1997, had not been claimed in the Combined Declaration and Power of Attorney. When these errors, which were made inadvertently and without deceptive intent, were

recognized, a Petition, mailed December 6, 2004 was promptly filed. The entire delay between the date the claim was due and the date the claim was (properly) filed was unintentional.

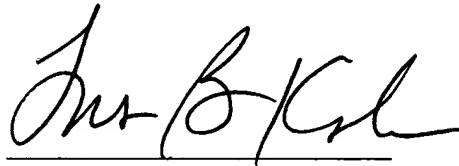
Applicants are concurrently submitting a substitute amendment to the specification that provides the required reference to all applications to which priority is desired to be claimed, namely the '511 application, International Application No. PCT/US97/21687, and the '034 application. The substitute amendment does not contain a statement which incorporates the prior applications by reference.

Applicants respectfully request that this Petition to Correct Priority Date under 37 C.F.R. § 1.78(a)(3) to PCT/US97/21687 and the '034 application be granted.

Applicants enclose a check for \$1,370.00, which represents the required petition fee forth under 37 C.F.R. § 1.17(t). The Commissioner is hereby authorized to charge payment of fees or to credit any overpayment associated with this communication to Deposit Account No. 02-4377. Two copies of this paper are enclosed.

Respectfully submitted,

BAKER BOTTS, L.L.P.

A handwritten signature in black ink, appearing to read 'Lisa B. Kole', written over a horizontal line.

Lisa B. Kole  
PTO Reg. No. 35,225

Attorneys for Applicant  
(212) 408-2500

JUN 17 2005

PTO/SB/17 (10-04)

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# FEE TRANSMITTAL

## for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 1370

## Complete if Known

Application Number	09/801,540
Filing Date	March 8, 2001
First Named Inventor	Bott
Examiner Name	Woitach, Joseph T
Art Unit	1632
Attorney Docket No.	30571-A-PCT-USA-A (070165.0582

## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number  
Deposit Account Name

02-4377

Baker Botts L.L.P.

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity Fee Code	Small Entity Fee Code	Fee Description	Fee Paid
1001	2001	Utility filing fee	
1002	2002	Design filing fee	
1003	2003	Plant filing fee	
1004	2004	Reissue filing fee	
1005	2005	Provisional filing fee	
SUBTOTAL (1)			(\$ 0

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid	
-20	=	X	=0	
Independent Claims	-3	=	X	=0
Multiple Dependent		=	=0	

Large Entity Fee Code	Small Entity Fee Code	Fee Description
1202	2202	Claims in excess of 20
1201	2201	Independent claims in excess of 3
1203	2203	Multiple dependent claim, if not paid
1204	2204	** Reissue independent claims over original patent
1205	2205	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee Code	Fee Description	Fee Paid
1051	2051	Surcharge - late filing fee or oath	
1052	2052	Surcharge - late provisional filing fee or cover sheet	
1053	1053	Non-English specification	
1812	1812	For filing a request for ex parte reexamination	
1804	1804	Requesting publication of SIR prior to Examiner action	
1805	1805	Requesting publication of SIR after Examiner action	
1251	2251	Extension for reply within first month	
1252	2252	Extension for reply within second month	
1253	2253	Extension for reply within third month	
1254	2254	Extension for reply within fourth month	
1255	2255	Extension for reply within fifth month	
1401	2401	Notice of Appeal	
1402	2402	Filing a brief in support of an appeal	
1403	2403	Request for oral hearing	
1451	1451	Petition to institute a public use proceeding	
1452	2452	Petition to revive - unavoidable	
1453	2453	Petition to revive - unintentional	
1501	2501	Utility issue fee (or reissue)	
1502	2502	Design issue fee	
1503	2503	Plant issue fee	
1460	1460	Petitions to the Commissioner	1370.00
1807	1807	Processing fee under 37 CFR 1.17(q)	
1806	1806	Submission of Information Disclosure Stmt	
8021	8021	Recording each patent assignment per property (times number of properties)	
1809	2809	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	2810	For each additional invention to be examined (37 CFR 1.129(b))	
1801	2801	Request for Continued Examination (RCE)	
1802	1802	Request for expedited examination of a design application	


Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 1370

## SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Lisa B. Kole	Registration No. (Attorney/Agent)	35,225	Telephone	212 408 2628
Signature		Date	6/14/05		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.

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PATENT

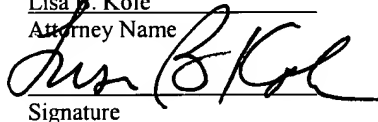
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bot *et al* Examiner : Woitach, Joseph T  
Serial No. : 09/801,540 Group Art Unit: 1632  
Filed : March 8, 2001  
For : IMMUNIZATION OF INFANTS

**SUBSTITUTE AMENDMENT**

I hereby certify that this paper is being deposited with the United States Postal Service via First Class Mail on June 14, 2005 and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

Lisa B. Kole  
Attorney Name

  
Signature

35.225

Registration No.

June 14, 2005

Date of Signature

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Commissioner for Patents  
Post Office Box 1450  
Alexandria VA 22313-1450

Sir:

Applicant's submit herein a response to the Decision on a Petition under 37 C.F.R. § 1.78(a)(3) mailed May 24, 2005 by the Office of Petitions. Applicants in addition concurrently file a "Petition to Correct Priority Claim Pursuant to 37 C.F.R. §1.78(a)(3)", together with the appropriate fee.



**AMENDMENTS TO THE SPECIFICATION**

Please insert the following paragraph and heading at page 1 immediately under the heading "SPECIFICATION" :

--- The present application is a continuation-in-part of U.S. Patent Application Serial No. 09/308,511 of Bot *et al.*, filed May 19, 1999, now abandoned, which is a 371 National Stage filing of International Patent Application PCT/US97/21687, filed November 27, 1997 and published in English as WO98/22145 on May 28, 1998, which is a continuation of U.S. Patent Application Serial No. 08/755,034 of Bot *et al.*, filed November 22, 1996.

**FEDERALLY FUNDED GRANT SUPPORT** ---

**REMARKS**

This paper is being filed in response to an Official Communication from the Office of Petitions mailed May 24, 2005. The Office of Petitions dismissed a petition to correct priority date pursuant to 37 C.F.R. § 1.78(a)(3), filed by the applicants December 6, 2004. Dismissal of the petition was for alleged non-compliance under 37 C.F.R. § 1.78(a)(3) which requires reference under 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2) of prior filed application(s) because the amendment filed December 6, 2004 were deemed improper because it incorporated previously filed applications by reference. Applicants herein submit a substitute amendment to properly claim benefit of priority to prior applications.

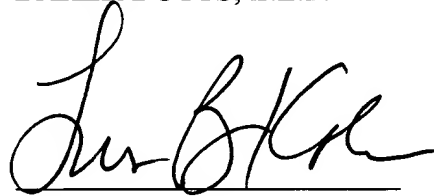
**CONCLUSION**

In view of the foregoing amendments and remarks and the accompanying Petition, Applicants request that the rejections of pending claims be removed.

Applicants herein enclose a check for \$1,370.00, which represents the required petition fees set forth under 37 C.F.R. § 1.17(t). Applicants believe that no additional fees are due. If however additional fees are due, the Commissioner is hereby authorized to charge payment of fees or to credit any overpayment associated with this communication to Deposit Account No. 02-4377. Two copies of this paper are enclosed.

Respectfully submitted,

BAKER BOTTS, L.L.P.

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Lisa B. Kole,  
PTO Reg. No. 35,225

Attorneys for Applicant  
(212) 408-2500